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JAMES R. BROWNING

No. 785

In the Supreme Court of the United States

OCTOBER TERM, 1958

DAVID E. HARTSHORN, PETITIONER

v.

DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
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On June 20, 1958, the District of Columbia Redevelopment Land Agency instituted condemnation proceedings in the United States District Court for the District of Columbia by filing a complaint and declaration of taking together with a deposit of estimated compensation pursuant to the Act of March 1, 1929 (45 Stat. 1415, as amended, 16 D.C. Code 619–644), and the District of Columbia Redevelopment Act of 1945 (60 Stat. 790, as amended, 5 D.C. Code 701, *et seq.*). A notice of proceedings was served on the same date on the landowners involved, including petitioner herein. On the Agency's motion of the same date, June 20, 1958, the court ordered delivery of possession effective September 17, 1958.

On July 19, 1958, petitioner filed a motion to vacate the order for delivery of possession. On August 19,

1958, the court, ruling that the condemnation was authorized, denied petitioner's motion. Trial of the just compensation issue was set for March 23, 1959, but has since been continued to May 20, 1959.*

Petitioner filed a notice of appeal from the order of August 19, 1958, denying his motion to vacate the order for delivery of possession. The Agency moved to dismiss the appeal on the ground that the order of August 19, 1958, was not a final judgment. On December 22, 1958, the court of appeals entered an order without opinion dismissing the appeal.

An order for delivery of possession entered on a declaration of taking is not a final order appealable under 28 U.S.C. 1291. *Catlin* v. *United States*, 324 U.S. 229. Nor did petitioner invoke the procedure for interlocutory appeals under 28 U.S.C. 1292(b) (added by Act of September 2, 1958, 72 Stat. 1770). The appeal was therefore properly dismissed without reaching the questions on the merits sought to be presented by petitioner. The petition for a writ of certiorari should be denied.

Respectfully submitted.

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APRIL 1959.

*Petitioner has already received (on August 29, 1958) the estimated compensation of $14,838 deposited by the Agency in the registry of the court.

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